85-1528 (1)

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

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EDD D. CALDWELL
*PETITIONER,*

V

JUDGE CRAIG T. ENOCH
*TEXAS 101ST. DISTRICT COURT,*

JOHN H. MARTIN
*TEXAS ATTORNEY, AND*

THOMPSON & KNIGHT
*A PROFESSIONAL CORPORATION*

*RESPONDENTS.*

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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## PETITION FOR A WRIT OF CERTIORARI

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

## QUESTIONS PRESENTED FOR REVIEW

1. WHY DID THE FIFTH CIRCUIT COURT OF APPEALS AFFIRM THE SUA SPONTE DISMISSAL OF THIS SUIT WHEN, IN PRIOR ACTIONS WITH THE SAME CLAIMS ASSERTED, THE SAME ISSUES OF LAW APPLICABLE AND SIMILARLY DISMISSED, THE DISTRICT COURT'S DISMISSAL WAS REVERSED AND ON CERTIORARI REMANDED FOR TRIAL BY THE SUPREME COURT? AN ACTION IN WHICH NONE OF THE DEFENDANTS WERE REQUIRED TO NOR DID THEY FILE ANSWERS.

2. WHY SHOULD PETITIONER BE DEPRIVED OF HIS RIGHT TO A FAIR TRIAL BEFORE AN UNBIASED AND UNPREJUDICED JUDGE BECAUSE OF THE DELIBERATE, MALICIOUS AND CORRUPT CONSPIRACY OF LOCAL, STATE AND FEDERAL COURTS WHO REFUSED TO RULE ON HIS WRIT OF ERROR PERFECTED IN THE TEXAS COURT OF APPEALS AND IN DUE ORDER OFFERED TO THE TEXAS SUPREME COURT, U. S. DISTRICT COURT JUDGE A. JOE FISH AND THE FIFTH CIRCUIT COURT

OF APPEALS? ALL IN VIOLATION OF OR IN CONFLICT WITH STATUTORY LAWS, RULES OF CIVIL PROCEDURE AND CONTROLLING DECISIONS OF THE SUPREME COURT OF TEXAS.

3. WHY DID THE U. S. DISTRICT COURTS AND THE FIFTH CIRCUIT COURT OF APPEALS DEPART FROM THE USUAL AND ACCEPTED JUDICIAL PROCEDURE AND PERMIT AN ELECTED OFFICIAL, DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY HENRY WADE, SERVE AS ATTORNEY OF RECORD FOR DEFENDANT JUDGE WHEN IT WAS CLEAR HE HAD NO TEXAS CONSTITUTIONAL OR LEGISLATIVE AUTHORITY TO PRACTOCE LAW OR REPRESENT THE STATE IN FEDERAL COURTS?

4. WHY DID THE FIFTH CIRCUIT COURT OF APPEALS SANCTION THE UNLAWFUL SUBSTITUTION BY DEFENDANT, AND THE U. S. DISTRICT COURT JUDGE A. JOE FISH, OF U. S. LAWS RELIED UPON BY PETITIONER, WITH ANOTHER LAW UNDER WHICH A DEFENSE WAS OFFERED?

5. WHY DID THE FIFTH CIRCUIT COURT OF APPEALS REFUSE TO RULE ON PETITIONER'S

PETITION FOR A WRIT OF MANDAMUS TO U. S. JUDGE A. JOE FISH BY PRETENDING SUCH PETITION WAS AN UNTIMELY NOTICE OF APPEAL AND TREATED AS AN APPEAL WHEN THE CAUSE REFERRED TO HAD ALREADY BEEN APPEALED AND WAS PENDING IN THAT COURT?

FOOTNOTE: DR. BARRY W. UHR, INTERESTED PARTY IN THE OUTCOME OF THIS REVIEW, IS REPRESENTED BY DEFENDANTS JOHN H. MARTIN AND THOMPSON & KNIGHT AND IS THUS ADVISED.

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EDD D. CALDWELL PETITIONER

V

JUDGE CRAIG T. ENOCH, ET AL RESPONDENTS

---

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUDGES OF THE SUPREME COURT:

EDD D. CALDWELL, PETITIONER, RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT OF THE UNITED STATE COURT OF APPEALS FOR THE FIFTH CIRCUIT ENTERED ON JUNE 20, 1984 (App 6a, 7a). THE PETITION FOR A REHEARING WAS DENIED ON JULY 26, 1984. (App. 8a).

ADDITIONALLY, PETITIONER PRAYS THIS COURT REVIEW EACH ORDER, OPINION OR JUDGMENT OF THE COURTS BELOW WHICH WERE THE PROXIMATE CAUSE AND RESULT OF COLLUSION AND CONSPIRACY BETWEEN PRIVATE INDIVIDUALS AND JUDGES TO DEPRIVE AND DID DEPRI-

VE PETITIONER OF RIGHTS AND PRIVILEGES SECURED TO HIM BY THE CONSTITUTION AND LAWS OF THE UNITED STATES AND THE STATE OF TEXAS.

IDENTITY AND JURISDICTION FOR REVIEW OF THE ABOVE CASES IS CONTAINED IN THE JURIDICTIONAL STATEMENT.

JURISDICTIONAL STATEMENT

IDENTITY OF CASES OFFERED FOR REVIEW ARE DESIGNATED AS "REVIEW A" AND "REVIEW B."

"REVIEW A" NUMBERED AND STYLED, EDD D. CALDWELL V JUDGE CRAIG T. ENOCH, ET AL, CA-3-83-2236 R IS A CIVIL RIGHTS ACTION FILED IN THE UNITED STATES DISTRICT COURT, DALLAS, TEXAS. JUDGE JERRY BUCHMEYER DISMISSED SUA SPONTE - NO ANSWERS WERE FILED BY DEFENDANTS. THE DISMISSAL WAS AFFIRMED WITHOUT OPINION BY THE FIFTH CIRCUIT COURT OF APPEALS UNDER CASE NO. 84-1168 ON JUNE 20, 1984 (APP. 6a,7a). PETITION FOR REHEARING WAS DENIED ON JULY 26, 1984 (App. 8a). BOTH JUDGMENTS ARE UNREPORTED. THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28

U.S.C. § 1254 (1).

"REVIEW B" INCLUDES THE FOLLOWING CAUSES BEGINNING WITH A HEALTH CARE LIABILITY (MEDICAL MALPRACTICE) SUIT IN THE COURT OF FIRST INSTANCE:

1. TEXAS 101ST DISTRICT COURT, 80-4993-E EDD D. C ALDWELL V DR. BARRY W. UHR.

2. TEXAS COURT OF APPEALS, DALLAS, 05-82-00130CV, EDD D. CALDWELL V DR. BARRY W. UHR, PETITION FOR WRIT OF ERROR.

3. TEXAS SUPREME COURT, AUSTIN, C-1932 EDD D. CALDWELL V JUDGE CRAIG T. ENOCH, APPEAL ON WRIT OF ERROR. RULE 474, TEX. R. CIV. P.

4. U. S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, JUDGE A. JOE FISH, CA 3-83-1084 G, EDD D. CALDWELL V JUDGE CRAIG T. ENOCH, FOR DECLARATORY JUDGMENT UNDER 28 U.S.C. §§ 1343 (a)(3), 2201.ATTEMPT TO OBTAIN RULING ON WRIT OF ERROR.

5. FIFTH CIRCUIT COURT OF APPEALS, EDD D. CALDWELL, PETITIONER-PLAINTIFF:

A. 83-1715-V JUDGE CRAIG T. ENOCH, APPEAL FROM DISMISSAL OF CA 3-83-1084 G

B. 83-1715-V JUDGE CRAIG T. ENOCH, MOTION TO DISQUALIFY DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY HENRY WADE FROM PRACTICE OF LAW IN FEDERAL COURT.

C. 83-1796-RE: PETITION FOR A WRIT OF MANDAMUS TO FEDERAL JUDGE A. JOE FISH.

ALL JUDGMENT ARE UNREPORTED.

ALTHOUGH DISPOSITION HAS BEEN MADE IN ALL ACTIONS IN "REVIEW B" THEY ARE PROPERLY BEFORE THIS COURT BECAUSE:

1. THEY ARE MATERIAL, RELATIVE AND DEMONSTRATIVE EVIDENCE OF WILFUL COLLUSION AND CONSPIRACY BETWEEN DEFENDANTS, DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY HENRY WADE AND JUDGES OF THE INFERIOR FEDERAL COURTS, AS A CONTINUATION OF SIMILAR ABUSES COMPLAINED OF IN CA 3-83-2236 R.

2. THE COURT'S INHERENT POWERS TO MAKE ITS RECORD "SPEAK THE TRUTH", BY RETROACTIVELY DOING NOW WHAT SHOULD HAVE

BEEN DONE, UNDER THE APPLICATION OF NUNC PRO TUNC, IS NOT WAIVED NOR DIMINISHED BY PETITIONER'S FAILURE TO TIMELY FILE AN APPEAL. SUCH RULINGS HAVE THE SAME LEGAL FORCE AND EFFECT AS IF DONE AT THE TIME IT SHOULD HAVE BEEN DONE. PETER'S ESTATE, 175 OKLA. 90; SIMMONS V ATLANTIC COAST LINE R.R. CO, (D.C.S.C.) 235 F.Supp. 325,330 AND STATE V HATLEY, 72 N.M. 377; 384 P 2d 252,254.

FOR ALL CASES THE RECORD ON APPEAL, BRIEFS, MOTIONS AND ORDERS ARE IN POSSESSION OF THE COURTS IN WHICH THEY WERE ORIGINALLY FILED.

CONSTITUTIONAL PROVISION INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT XIV: "NO STATE SHALL ---DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS." (R. p 3)

STATEMENT OF THE CASE

IN THE INTEREST OF BREVITY NO ATTEMPT IS MADE TO CONSOLIDATE ALL THE ARGUMENTS

SUPPORTIVE OF PETITIONER. A GUIDE TO THE CONFLICT BETWEEN JUDGMENTS AND LAW, RULE AND PRECEDENT IS OFFERED WITH SUBSTANTIAL RELIANCE ON THIS COURT TO SCRUTINIZE THE APPENDIX AND THE RECORD.

REFERENCE GUIDE

R - RECORD ON CA 3-83-2236 R AND 84-1168.

RB - RECORD FROM COURT OF FIRST INSTANCE TO CONCLUSION - WRIT OF ERROR.

T.TR. - TRANSCIPT OF TRIAL IN TEXAS 101ST DISTRICT COURT. TWO VOLUMES CONTAINING ONLY PETITIONER'S TESTIMONEY. NO DEFENSE WAS OFFERED BY DEFENDANT AND THE COURT DID NOT REQUIRE IT. CERTIFIED FEBRUARY 16, 1984.

T.TR.SUPP. - SUPPLEMENTAL TRANSCRIPT - ABOVE TRIAL. ONE VOLUME CONTAINING MOTION OF DEFENDANT FOR INSTRUCTED VERDICT AND PETITIONER'S OBJECTIONS. CERTIFIED ONLY BY DEMAND ON MARCH 2, 1984.

"REVIEW A"

ON DECEMBER 22, 1983 PETITIONER FILED HIS COMPLAINT AGAINST NAMED DEFENDANTS IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS. (R. 1,27). IT WAS ASSIGNED NO. CA 3-83-2236-R,JUDGE JERRY BUCHMEYER. THIS IS A CIVIL RIGHTS LAWSUIT FILED PURSUANT TO TITLE 42 U.S.C. § 1983, ET SEQ. THIS IS A SUIT IN LAW AND EQUITY PERMITTED BY LAW TO BE BROUGHT IN THE UNITED STATES DISTRICT COURT AS PROVIDED BY TITLE 28 U.S.C. §§ 1331 AND 1343 (a)(1)(2)(3)(4) AND REQUIRED TO BE TRIED BY THE SUPREME COURT OF THE UNITED STATES. (R.40).

THE CLAIM WAS THAT "DEFENDANTS CONSPIRED TO AND DID DEPRIVE PLAINTIFF OF RIGHTS SECURED TO HIM BY THE CONSTITUTION AND LAWS OF THE UNITED STATES; THAT DEFENDANTS ACTED UNDER COLOR OF LAW." (R. 23). THE CONSPIRACY WAS MANIFEST IN SO MANY DIVERSE WAYS THE CLAIM WAS RESTATED NINE TIMES

(R. 4,8,9,10,23,24,38,39,40 AND ON CIVIL COVER SHEET).

INCREDIBLY, NEITHER DISTRICT JUDGE JERRY BUCHMEYER NOR THE APPEALS COURT PANEL EVER MENTIONED THE CLAIM. (R 28,29, APP. 1a THRU 8a).

DEFENDANTS WERE NOT REQUIRED TO NOR DID THEY FILE ANSWERS. JUDGE BUCHMEYER'S SUA SPONTE ORDER OF DISMISSAL WAS FILED ON THE AFTERNOON OF THE LAST DAY FOR FILING ANSWERS, RAISING THE REASONABLE PRESUMPTION DEFENDANTS HAD PRIVILEGED COMMUNICATIONS FROM THE COURT.

PREREQUISITE MOTION TO AMEND UNDER RULE 59(e) F.R.C.P. WAS SENT CERTIFIED MAIL, RETURN RECEIPT REQUESTED ON JANUARY 17, 1984(App. 36a). THE COURT RECEIVED THE ENVELOPE ON POSTAL FORM PS 3883 VALIDATED JANUARY 18, 1984 (App. 35a).

EXCLUSIVE OF THE THREE ADDITIONAL DAYS ALLOWED UNDER RULE 6(e) F.R.C.P. THE LAST DAY THE MOTION WOULD HAVE BEEN TIMELY

UNDER RULE 59(e) WAS MONDAY, JANUARY 23, 1984, SATURDAY BEING THE 10TH DAY. ON THAT MONDAY AT 2:30 P.M. PETITIONER MADE APPEARANCE AT THE CLERK'S DESK AND ASKED TO SEE THE CASE FILE. THE CLERK WAS RUDE AND ABUSIVE. SHE DEMANDED TO KNOW WHAT WAS NEEDED. ON THE SECOND REQUEST THE FILE WAS RETRIEVED FROM JUDGE BUCHMEYER'S COURT. WHEN ASKED WHERE THE MOTION TO AMEND WAS, THE CLERK REPLIED NO SUCH MOTION WAS BEFORE THE COURT. THEREUPON, PETITIONER PRESENTED FOR FILING A "NEW" MOTION BROUGHT FOR SPECIFIC PURPOSE OF ENSURING THAT A TIMELY MOTION TO AMEND WAS FILED. SHE REFUSED, STATING THERE WAS NO "CONFERENCE MOTION" BUT COULDN'T EXPLAIN HOW SHE KNEW, FOR SHE LOOKED ONLY AT THE COVER SHEET. WHEN INFORMED THERE WAS NO LOCAL OR FEDERAL RULE REQUIRING CONFERENCE WITH PARTIES WHO HAD NOT MADE AN APPEARANCE NOR WAIVER OF HIS RIGHT TO FILE THE MOTION....IT WAS ENTERED. (R. 38 thry 43).

THE FOLLOWING DAY PETITIONER RECEIVED

AN ENVELOPE FROM THECOURT VALIDATED JANUARY 23, 1984 WITH ALL THE ORIGINAL PAPERSALONG WITH AN UNSIGNED AND UNVALIDATED RETURN RECEIPT (APP. 36a). JUDGE BUCHMEYER HAD HELD THE MOTION SIX DAYS...CLEARLY AN ATTEMPT TO PREVENT PETITIONER FROM FILING THE MOTION AND FORECLOSE APPEAL.

CITING ONLY THE ORIGINAL ORDER OF DISMISSAL, THE MOTION TO AMEND WAS DENIED ON JANUARY 27, 1984 (R. 44, APP. 3a). THE DISMISSAL WAS IMPROPER AND WAS FAULTED IN ITS ENTIRETY FOR MAKING A JUDGMENT ON THE MERITS, WITHOUT ACKNOWLEDGING THE MERITS AND FOR UTILIZING GENERAL DEMURRERS, FAILING THE STRICT REQUIREMENTS OF RULE 7 (a)(c) AND 41 (b). THE ORDER IS FLAWED IN ITS PARTS FOR HOLDING CONTRARY TO OTHER DISTRICT COURTS, COURTS OF APPEAL AND THE SUPREME COURT.SPECIFICALLY, DENNIS V SPARKS, 101 S.CT. 183,188 (S.CT. OCTOBER 1980)(R 40), RHODES V HOUSTON, 202 F.Supp. 624 (D.C.Neb. 1962)(R 39) AND WEISS V J. C. PENNEY CO.,

INC, 414 F.Supp. 52, 54 (D.C. OHIO) (R. 42) ARE EXAMPLES OF PRIOR DECISIONS WITH WHICH THIS DISMISSAL IS IN CONFLICT. THESE WELL SETTLED ISSUES OF LAW REQUIRE THAT "TO SUSTAIN A SUIT UNDER § 1983 THE ONLY REQUISITE IS THAT A CLAIM BE STATED", RHODES V HOUSTON, 202 F.Supp. 624 (D.C. Neb.1962);THAT WHEN JUDGES CLAIM JUDICIAL IMMUNITY "THE BURDEN IS ON THE OFFICIAL CLAIMING IMMUNITY TO DEMONSTRATE HIS ENTITLEMENT", BUTZ V ENONOCOU, 98 S. CT. 2894 (1975); DESPITE OTHER CONSIDERATIONS IT "DID NOT PRECLUDE MAINTENANCE OF THE ACTION AGAINST THE PRIVATE PARTIES", DENNIS V SPARKS, 101 S. CT. 183, 188 (OCTOBER, 1980). FOR THESE REASONS AND THOSE IN THE RECORD (R. 38-43) AND APPELLANT'S BRIEF, THE DISTRICT COURT'S DISMISSAL WAS ERROR.

ON APPEAL, BRIEF FOR JUDGE ENOCH WAS FILED APART FROM OTHER DEFENDANTS. MOTIONS TO STRIKE BRIEFS OF ALL DEFENDANTS WERE FILED BECAUSE THEY WERE IN VIOLATION OF OR

DEFEATED THE PURPOSE OF RULES 1, 7 (a)(c), 8 (b), 11 F.R.C.P. AND 28 (a)(b) F.R.A.P. THERE IS AMPLE EVIDENCE IN THE MOTIONS TO DISCREDIT THE BRIEFS BUT THE APPEALS PANEL SIMPLY DENIED THEM WITHOUT COMMENT (APP. 4a, 5a).

FOR THE FIFTH TIME (APP. 27a) THE COURTS WERE REQUESTED TO DISQUALIFY DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY HENRY WADE FROM PRACTICING LAW IN FEDERAL COURTS FOR LACK OF CONSTITUTIONAL OR LEGISLATIVE AUTHORITY. SUCH REPRESENTATION BY ELECTED OFFICIALS IS SPECIFICALLY BARRED BY TEXAS CIVIL STATUTE ART. 332(b) 4 ¶ 5(a)(b). SEE MOTION FOR SUSPENSION OF THE RULES, FIFTH CIRCUIT CASE NO. 83-1715 FILED JANUARY 16, 1984) EVERY REQUEST WAS DENIED OR IGNORED.

"REVIEW B"

LISTED BELOW IN CHRONOLOGICAL SEQUENCE ARE THE OPINION, ORDERS AND JUDGMENTS OF STATE AND FEDERAL COURTS AND INDICATIONS OF THE CONFLICT BETWEEN SUCH ACTIONS AND

SUBSTANTIVE, STATUTORY LAW, RULES OF CIVIL AND APPELLATE PROCEDURE AND ESTABLISHED PRECEDENT.

I

IN THE 101ST DISTRICT COURT OF TEXAS, DALLAS 80-4993-E, V DR. BARRY W. UHR, M.D.

A. THE ORDER - (ENTERED DECEMBER 28, 1981) APPLICATION FOR CHANGE OF VENUE OVERRULED (APP. 9a).

THE CONFLICT - VIOLATES RULE 258[1], TEX. R. CIV. P. IGNORES CONTROLLING DECISION OF TEXAS SUPREME COURT IN CITY OF ABILENE V JOHN F. DOWNS[2], 367 S.W. 2d 153,154 (TEX. S. CT. 1964).

COMMENTS - SUPREME COURT DECISIONS HAVE REMAINED CONSISTENT FOR MORE THAN 100 YEARS. FILING OF THE CONTROVERTING AFFIDAVIT WAS THE ONLY MEANS BY WHICH DEFENDANTS COULD HAVE JOINED THE ISSUE OVER VENUE. BY EDICTS OF THE SUPREME COURTS, FAILURE OF DEFENDANTS TO FILE SUCH A CONTROVERTING AFFIDAVIT DEPRIVED JUDGE OF DISCRETIONARY POWER

TO RULE ON VENUE. JUDGE WAS THEN AND THEREAFTER ACTING IN THE CLEAR ABSENCE OF ALL JURISDICTION.

1. RULE 258, TEXAS RULES OF CIVIL PROCEDURE: WHERE SUCH APPLICATION FOR A CHANGE OF VENUE IS DULY MADE, IT SHALL BE GRANTED, UNLESS THE CREDIBILITY OF THOSE MAKING SUCH APPLICATION OR THEIR MEANS OF KNOWLEDGE OR THE TRUTH OF THE FACTS SET OUT IN SUCH APPLICATION ARE ATTACKED BY THE AFFIDAVIT OF A CREDIBLE PERSON; WHEN THUS ATTACKED, THE ISSUE THUS FORMED SHALL BE TRIED BY THE JUDGE, AND THE APPLICATION EITHER GRANTED OR REFUSED.

2. CITY OF ABILENE V JOHN F. DOWNS, 367 S.W. 2d 153, 154.

VENUE RULE PROVIDING THAT AN APPLICATION FOR A CHANGE OF VENUE SHALL BE GRANTED UNLESS TRUTH OF THE FACTS SET OUT ARE ATTACKED BY THE AFFIDAVIT OF A CREDIBLE PERSON IS MANDITORIALLY OPERATIVE AND PROVIDES THE ONLY MEANS BY WHICH ISSUE OVER VENUE CAN BE JOINED, AND SUCH AN AFFIDAVIT IS PREREQUISITE TO INVOCATION OF DISCRETIONARY POWERS OF TRIAL JUDGE TO DETERMINE IF VENUE CAN BE SUSTAINED, AND IF SUCH AN AFFIDAVIT IS NOT FILED, TRIAL JUDGE IS REQUIRED TO REMOVE THE CAUSE. RULES OF CIVIL PROCEDURE, RULE 258.

B. THE FINAL JUDGMENT - (ENTERED JANUARY 25, 1982) SUSTAINED THE MOTION FOR INSTRUCTED VERDICT AND DISCHARGED THE JURY.(APP. 10a AND T.TR.SUPP. 1-9).

THE CONFLICT - THE SIX POINTS MOTION

WAS DEFECTIVE IN ITS ENTIRETY (T.TR.SUPP. 2-4) AND JURY UNLAWFULLY DISMISSED (APP. 10a)(T.TR.SUPP. 7-9). POINTS I THRU IV WERE DECLARATIONS RELATING TO "STANDARDS OF CARE." CLAIM ASSERTED BY PETITIONER WAS "UNILATERAL ABANDONMENT." POINT V FRAUDULENTLY STATED THAT DR. WINSLOW "TESTIFIED THAT DR. UHR, TO THE BEST OF HIS KNOWLEDGE EXERCISED ORDINARY CARE UNDER THE CIRCUMSTANCES (T.TR.SUPP. 4) WHEN IN FACT DR. WINSLOW TESTIFIED "I AM UNAWARE OF DR. UHR'S TREATMENT" (T.TR. 232). POINT VI STATED "PLAINTIFF'S CAUSE OF ACTION IS BARRED BY THE STATUTE OF LIMIATIONS" (T.TR.SUPP. 4). PETITIONER WAS THE ONLY PARTY TO FILE ARGUMENTS RELATING TO FILING REQUIREMENTS AND THE JUDGE REFUSED TO HEAR THE MOTION. THE LIMITATIONS IMPOSED BY V.T.C.S. ART. 4590i WERE DECLARED UNCONSTITUTIONAL IN 1984, DISPOSING OF THE ARGUMENT.

COMMENTS - ALL POINTS WERE SPEIFICALLY OBJECTED TO (T.TR.SUPP. 6-8). IN ANNOUNCING

INSTRUCTED VERDICT, JUDGE STATED HE HAD AGREED TO VERDICT IN EX-PARTE CONFERENCE WITH DEFENDANT. THIS STATEMENT IS NOT INCLUDED IN REPORTER'S TRANSCRIPT. AS THIS COURT OBSERVES THERE WAS NOTHING VALID IN THE MOTION UPON WHICH THE INSTRUCTED VERDICT COULD HAVE BEEN BASED. UNDER RULE 503 TEX.R.CIV.P. THIS IMPROPER ACT IS SUFFICIENT GROUNDS FOR A NEW TRIAL.

II

IN THE FIFTH SUPREME TEXAS COURT OF APPEALS, DALLAS, 05-82-00130 CV, EDD D. CALDWELL V DR. BARRY W. UHR, M.D.

A. THE ORDER - (ENTERED DECEMBER 30, 1982) AFFIRMING THE DISTRICT COURT FOR DEFECTS IN AFFIDAVITS AND REFUSING TO RULE ON PETITION FOR WRIT OF ERROR. (APP. 11a, 12a).

THE CONFLICT - VIOLATION OF V.T.C.S. ART. 1728, AND RULES 14a, 90, 437, AND 452 TEX.R.CIV.P. V.T.C.S. ART. 1728 PROVIDES THAT TEXAS COURTS OF APPEAL MUST RULE THE SAME AS OTHER COURTS OF APPEAL OR THE

SUPREME COURT. RULE 14a APPLIES RULE 437 TO ALL COURTS IN TEXAS. RULE 90 NEW RULE EFF. 1-1-81 REQUIRES DEFECTS BE DECLARED IN WRITING AND CALLED TO THE COURT'S ATTENTION OR RIGHT TO APPEAL IS WAIVED. RULE 437 AS AMENDED JAN. 1, 1981, STATES IN PERTINENT PART, "A JUDGMENT SHALL NOT BE AFFIRMED..EITHER OF FORM OR SUBSTANCE, WITHOUT ALLOWING A REASONABLE TIME TO CORRECT OR AMEND SUCH DEFECTS." RULE 452 , AMENDED EFF. APRIL 15, 1982, STATES IN PART, "OPINIONS OF THE COURTS OF APPEAL SHALL BE AS BRIEF AS PRACTICLE AND YET DISPOSE OF EVERY SUBSTANTIAL ISSUE RAISED AND NECES= SARY TO DISPOSITION OF APPEAL."

COMMENT - ALLEGED DEFECTS IN AFFIDAVITS WAS NOT RAISED IN TRIAL COURT AND UNDER RULE 90 DEFENDANT HAD SPECIFICALLY WAIVED HIS RIGHT TO ALLEGE SUCH DEFECTS IN THE COURT OF APPEALS. APPEALS COURT AFFIRMED THE TRIAL COURT FOR THESE ALLEGED DEFECTS BUT WAS BARRED BY RULE 437 FROM MAKING

THIS DETERMINATION. (APP. 11a, 12a). COURT OF APPEALS REFUSED TO PERFORM AN ACT IMPOSED ON IT UNDER RULE 452 BY DECLARING "WE DO NOT REACH THE QUESTION OF WHETHER UHR WAS REQUIRED TO CONTROVERT THE MATTERS ALLEGED IN THE APPLICATION UNER TEX.R.CIV.P. 258." (APP. 12a), EVEN THOUGH THAT WAS THE ONLY ISSUE BEFORE THE COURT.

B. FIRST AND SECOND MOTIONS FOR REHEARING, UNDER RULE 458, TEX.R.CIV.P. AND MOTION FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW, UNDER RULE 453, TEX.R.CIV.P. SECOND MOTION FOR REHEARING IGNORED...OTHERS DENIED WITHOUT COMMENT. IN ALL, NINE POINTS OF ERROR AND SIX POINTS OF ETHICS OR LAW WERE BROUGH TO THE COURT'S ATTENTION IN RESPECT TO JUDGE WHITHAM'S OPINION...ALL WERE DENIED. (JANUARY 31, 1983)(APP. 13a)

III

IN THE TEXAS SUPREME COURT, C-1932 (FEB., 1983)EDD D. CALDWELL V JUDGE C.T.ENOCH.

A. THE NOTICE - LETTER DATED MARCH 23, 1983, FROM CLERK OF COURT ADVISING "THE SUPREME COURT OF TEXASOVERRULED THE MOTION FOR LEAVE TO FILE." (APP. 14a).

THE CONFLICT - VIOLATES RULES 474 and 483,TEX.R.CIV.P. AND V.T.C.S. ART. 1728 READ TOGETHER, THE INTENT OF SUBSTANTIVE, STATUTORY LAW AND TEXAS RULES OF CIVIL PROCEDURE REQUIRE THE SUPREME COURT TO GRANT THE WRIT OF MANDAMUS WHEN THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH PRIOR DECISIONS OF THE SUPREME COURT, AS IT DID IN THIS CASE.

COMMENTS - THE PUBLISHED DECISIONS OF THE SUPREME COURT ARE PROLIFIC AND CONSISTENT FOR MORE THAN 100 YEARS IN CASES OF VENUE WHEN ADVERSE PARTY FAILS TO FILE A CONTROVERTING AFFIDAVIT AS REQUIRED BY RULE 258, TEX.R.CIV.P. OVERRULING OF THE MOTION WAS TANTAMOUNT TO REFUSAL TO RULE ON PETITION FOR WRIT OF ERROR, SUPRA. MOTION FOR REHEARING AND RESPONSE TO REPLY

OF DR. BARRY W. UHR SETTING FORTH THESE FACTS AND FRAUDULENT NATURE OF DR. UHR'S REPLY WAS SIMILARLY IGNORED OR OVERRULED, MAY 25, 1983. (APP. 15a).

IV

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS, JUDGE A. JOE FISH, PRESIDING, CA 3-83-1084-G, EDD D. CALDWELL V JUDGE CRAIG T. ENOCH, FOR DECLARATORY JUDGMENT.

MEMORANDUM ORDER - (ENTERED SEPTEMBER 8, 1983). DEFENDANT'S MOTION TO DISMISS GRANTED (APP. 16a-22a)(RB 55-61).

THE CONFLICT - VIOLATION OF RULES 1,7, 8(b), 11, 12(b), 41(b), 52(a), 81(e) F.R.C.P. AND CONTROLLING DECISIONS OF THE SUPREME COURTS OF TEXAS AND THE UNITED STATES. THESE RULES **REQUIRE** AN ANSWER TO A COMPLAINT. IF THD NAMED DEFENDANT BELIEVES THE CLAIMS ASSERTED ARE FALSE, WITHOUT MERIT, OR INVALID HE MUST OFFER IN SHORT AND PLAIN TERMS HIS DEFENSE TO EACH CLAIM.

THE SIGNATURE OF THE ATTORNEY OF RECORD IS HIS TESTIMONY THAT THERE IS GOOD GROUNDS TO SUPPORT THE ANSWER. ABOVE ALL THERE IS AN INFERENCE THAT THE JUDGE UNDERSTANDS THE CLAIMS. THERE IS NO EVIDENCE THAT ANY OF THESE CONDITIONS WERE MET.

COMMENTS - THIS DISMISSAL IS AN EPIC OF USURPATION AND ABUSE OF JUDICIAL POWER. IT IS CONTEMPTUOUS OF LEGISLATIVE AND JUDICIAL EDICTS. THIS SEVEN PAGE ORDER WAS DRAFTED AT THE BEHEST OF DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY HENRY WADE AND SIGNED BY A JUDGE WHO KNEW OF ITS FALSITY. HENRY WADE'S MOTION TO DISMISS RELIED ON RULE 12(b)(6) - "FAILURE TO STATE A CLAIM." THEN BEGAN HIS MOTION BY STATING PETITIONER DID NOT INTEND TO SEEK "DECLARATORY JUDGMENT" BUT INSTEAD SOUTHT "DAMAGES" UNDER TITLE 42 U. S.CODE § 1983.AT NO TIME DID THE MOTION OR THE ORDER MENTION PETITIONER'S RELIANCE ON TITLE 28 U.S.C. § 1343(a)(3) SUPPORTING TITLE 28 U.S.C. § 2201.

NEITHER THE JUDGE OR HENRY WADE WOULD ACKNOWLEDGE THE PRESENCE OF THE PETITION FOR A WRIT OF ERROR WHICH WAS THE ONLY ISSUE BEFORE THIS COURT. THIS WRIT OF ERROR WAS PERFECTED IN THE TEXAS APPEALS COURT, DALLAS COUNTY AND OFFERED TO THE SUPREME COURT OF TEXAS. BOTH COURTS REFUSED TO RULE ON THIS WRIT ALTHOUGH REQUIRED BY STATUTORY LAW AND RULES OF COURT TO DO SO. (APP. 12a, 14a).

V

IN THE U. S. COURT OF APPEALS FOR THE FIFTH CIRCUIT, NEW ORLEANS:

A. 83-1796 - PETITION FOR A WRIT OF MANDAMUS DIRECTED TO U. S. JUDGE A. JOE FISH.

THE ORDER - (ENTERED JANUARY 24, 1984) (APP. 24a, 25a). DECLARED PETITION WAS IN REALITY AN UNTIMELY FILED "NOTICE OF APPEAL" OF CASE NO. CA 3-83-1084-G, EDD D. CALDWELL V JUDGE CRAIG T. ENOCH.FURTHER ORDERED, IN DEFERENCE TO PETITIONER'S STATUS AS PRO-SE, THE PANEL TREATED THE PETI-

TION AS AN APPEAL. AS SUCH THE APPEAL WAS DENIED. (APP. 24a, 25a).

THE CONFLICT - AT THE TIME THE PANEL'S ORDER WAS FILED, JANUARY 24, 1984, THE TIMELY FILED NOTICE OF APPEAL IN THE REFERENCED ACTION, CA 3-83-1084-G, BRIEFS FOR BOTH PARTIES AND A REPLY BRIEF FOR APPELLANT WERE ALREADY PENDING IN THAT COURT UNDER CASE NO. 83-1715 (SEE ITEM B WHICH FOLLOWS THIS ENTRY). PETITIONER KNOWS OF NO RULE OR PRECEDENT FOR THE APPEALS COURT PANEL'S CONVERSION, FOR THE PETITION WAS WHAT IT PURPORTED TO BE ON ITS FACE.

COMMENTS - PETITION FOR REHEARING,FILED FEBRUARY 7, 1984, CONTAINED TEN SPECIFIC REASONS WHY JUDGE A. JOE FISH WAS SUBJECT TO MANDAMUS. REHEARING DENIED ON FORM LETTERDATED FEBRUARY 21, 1984 (APP. 25a).

B. 83-1715 - APPEAL FROM THE NORTHERN DISTRICT OF TEXAS, CA 3-83-1084-G, EDD D. CALDWELL V JUDGE CRAIG T. ENOCH, SEEKING DECLARATORY JUDGMENT ON WRIT OF ERROR.

THE ORDER - (ENTERED APRIL 26, 1984) AFFIRMS THE DISTRICT COURT DISMISSAL (APP. 28a - 33a). ESTABLISHES NEW FOUR PART TEST TO CREATE JUDICIAL IMMUNITY IN THIS ACTION, IGNORING PRIOR CRITERIA. REPEATS ARGUMENTS IN MOTION TO DISMISS AND DISMISSAL ORDER COMPOSED BY DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY HENRY WADE, THAT THE CAUSE OF ACTION RELIES ON TITLE 42 U.S.C. § 1983. SEE COMPLAINT (RB. 2) AND CIVIL COVER SHEET (APP. 37a).

THE CONFLICT - RULE 258, TEX.R.CIV.P. AND CONTROLLING DECISIONS OF THE SUPREME COURTS OF TEXAS ESTABLISHES JURISDICTION OVER VENUE. DECISIONS OF THE SUPREME COURTS OF TEXAS HAVE REMAINED CONSISTENT FOR MORE THAN 100 YEARS AND WHEN ADVERSE PARTY FAILS TO FILE A CONTROVERTING AFFIDAVIT. THAT DECISION IS EXPRESSED IN CITY OF ABILENE V JOHN F. DOWNS, 367 S. W. 2d 153,154, id.

COMMENTS - THE PETITION FOR A WRIT OF ERROR PERFECTED IN THE TEXAS COURT OF AP-

PEALS HAS NEVER BEEN DIRECTLY ADDRESSED OR RULED ON BY ANY COURT TO WHICH IT HAS BEEN OFFERED. NO DEFENSE HAS EVER BEEN MADE TO PETITIONER'S CLAIM THAT HE WAS ENTITLED TO THE CHANGE OF VENUE AS A MATTER OF LAW. PETITION FOR REHEARING WAS DENIED WITHOUT COMMENT ON MAY 24, 1984 (APP. 34a). FOR A LACK OF TRAINING, NOT LACK OF DILIGENCE, PETITIONER SUBMITTED THIS ACTION IN AN AFFIDAVIT WHICH WAS NOT DOCKETED.

C. SUPPLEMENTAL TO 83-1715 - MOTION TO SUSPEND THE RULES FOR THE PURPOSE OF DISQUALIFYING ELECTED OFFICIAL DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY HENRY WADE FROM ACTING AS ATTORNEY IN FEDERAL COURT IN VIOLATION OF CONSTITUTION AND LAWS OF TEXAS.

THE ORDER - (ENTERED APRIL 26, 1984) MOTION DENIED WITHOUT COMMENT (APP. 27a).

THE CONFLICT - VIOLATION OF RULE 81(e) F.R.C.P. REQUIRING OBSERVANCE OF STATE LAW.....IGNORES TEXAS CONSTITUTIONAL

PROVISION IN ART. 5, § 21 AMD TEXAS CODE OF CRIMINAL PROCEDURE ART. 2.01 WHICH LIMITS POWER OF CRIMINAL DISTRICT ATTORNEY TO REPRESENT THE STATE TO STATE DISTRICT AND INFERIOR COURTS IN THE COUNTY OF HIS ELECTION. LEGISLATIVE INTENT IS CLEARLY ESTABLISHED IN V.T.C.S. ART. 332(b)-4 §5(a) (b) WHICH STATES COUNTY PROSECUTORS "MAY NOT ENGAGE IN THE PRIVATE PRACTICE OF LAW." THE SPECIFIC PROHIBITION IS REPORTED IN CRANE V STATE OF TEXAS, 534 F.Supp. 1237. (N.D. Tex. 1982).

## CONCLUSIONS

THIS FIVE-YEAR JUDICIAL NIGHTMARE IS THE RESULT OF A CONSPIRACY TO PREVENT THE SUCCESSFUL PROSECUTION OF A LAWSUIT FOR DAMAGES AGAINST TEXAS OPHTHALMOLOGIST DR. BARRY W. UHR (R. 14,15). THE SAME ABSOLUTION IS NOT OFFERED TO OTHER PROFESSIONALS IN TEXAS MEDICINE.

CONFLICTS BETWEEN OPINION, ORDERS AND JUDGMENTS OF THE INFERIOR COURTS ESTABLISH

A PATTERN OF CONTEMPT BY THOSE COURTS OF THE CONSTITUTIONS, LAWS, RULES OF COURT AND DECISIONS OF THE HIGHEST COURTS IN THE STATE AND THE UNITED STATES.

THE UNLAWFUL PARTICIPATION AS ATTORNEY OF RECORD OF DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY HENRY WADE IN FEDERAL CIVIL CASES HAS PROVEN TO BE TOTALLY DESTRUCTIVE OF PETITIONER'S SUBSTANTIVE, CONSTITUTIONAL AND LEGAL RIGHTS.

PETITIONER HAS SPENT SEVEN YEARS IN RESEARCH AND FINDS **NO** INSTANCE OF A PRO-SE LITIGANT PREVAILING IN A CIVIL COURT OF RECORD, SAVE FOR INCARCERATED CRIMINALS. PETITIONER ASKS THIS COURT TO OBSERVE HOW MANY TIMES HE IS REFERRED TO AND POINTEDLY IDENTIFIED BY THE COURTS AS A **PRO-SE** AND THEN HELD AGAINST IMPROPERLY.

## RELIEF SOUGHT

THE WRIT SHOULD ISSUE AND THE SUPREME COURT'S DOMINANCE AND INHERENT POWERS UNDER NUNC PRO TUNC SHOULD BE EVOKED TO

REMAND THE FOLLOWING ACTIONS TO TRIAL:

1. 80-4993-E, EDD D. CALDWELL V DR. BARRY W. UHR, PENDING IN THE 101ST DISTRICT COURT, BE REMOVED TO THE 86TH DISTRICT COURT IN KAUFMAN COUNTY, TEXAS.

2. CA 3-83-2236-R, EDD D. CALDWELL V JUDGE CRAIG T. ENOCH, et al, BE REMOVED TO A UNITED STATES DISTRICT COURT OUT OF DALLAS COUNTY.

AND ISSUE THIS COURT'S ORDER DISQUALIFYING DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY HENRY WADE OR HIS EMPLOYEES FROM REPRESENTING THE STATE IN FEDERAL COURTS IN VIOLATION OF TEXAS CONSTITUTION AND LAWS.

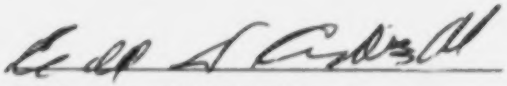
AND ISSUE SUCH OTHER ORDERS AS ARE APPRIATE IN THE CIRCUMSTANCES.

RESPECTFULLY SUBMITTED,

EDD D. CALDWELL, PETITIONER
13236 VALLEY FORGE
BALCH SPRINGS, TEXAS 75180
(214) 286-5123

## AFFIDAVIT OF SERVICE

IN COMPLIANCE WITH RULE 28.5(c) OF THE SUPREME COURT OF THE UNITED STATES, I DECLARE, UNDER PENALTY OF PERJURY, THAT A TRUE AND CORRECT COPY OF THIS PETITION FOR A WRIT OF CERTIORARI HAS BEEN MAILED, FIRST CLASS MAIL, POSTAGE PREPAID, TO JUDGE CRAIG T. ENOCH, 300 RECORDS BLDG., DALLAS, TEXAS 75202 AND TO JOHN H. MARTIN AND THOMPSON & KNIGHT, C/O ROBERT H. THOMAS, 1200 ONE MAIN PLACE, DALLAS, TEXAS 75202, ON THE 10 DAY OF FEBRUARY, 1986 AND THAT THEY ARE ALL THE PARTIES REQUIRED TO BE SERVED.



EDD D. CALDWELL